

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

4 UNITED STATES OF AMERICA) Case Number
5) 1:09-CR-551-LMM-JFK-1
6)
7 v.)
8) Atlanta, Georgia
9) July 23, 2018
10 EDGAR VALDEZ-VILLAREAL, et al.)
11)
12)
13)

14 TRANSCRIPT OF RECORDED MOTION TO APPOINT COUNSEL
15 BEFORE THE HONORABLE JANET F. KING
16 UNITED STATES MAGISTRATE JUDGE

17 APPEARANCES OF COUNSEL:

18 FOR THE GOVERNMENT: MS. ELIZABETH HATHAWAY

19 FOR THE DEFENDANT: MR. WILMER PARKER

20 Official Court Reporter: ALICIA B. BAGLEY, RMR, CRR

21 Proceedings recorded by mechanical stenography, transcript
22 produced by computer
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P R O C E E D I N G S

(In Atlanta, Fulton County, Georgia; July 23, 2018;
in open court; defendant present)

THE COURT: Please be seated. Good morning.

Okay. This is the case of the United States of America vs. Valdez-Villareal, 1:09-CR-551. Ms. Hathaway is here for the government and Mr. Parker is seated with the defendant. This matter was referred to me initially by District Judge Duffey and by Judge Martin May who's now handling the case. It's before me because there is a motion for appointment of appellate counsel that was filed on June the 18th and we are setting this down because there is some question as to whether or not there's an issue with the defendant wanting to appeal, or not, and whether or not there's an issue -- there's a question of whether or not the defendant wants to bring up the matter of ineffective counsel.

Mr. Parker, I'll hear from you first and if your client would like to speak and if the government -- and if you all would like to have this matter discussed outside Ms. Hathaway's presence, we can do that also.

MR. PARKER: Your Honor, as we had informed the Court previously, Mr. Valdez was sentenced by Judge Duffey on June the 11th. Unbeknownst to Mr. Maloy and myself, there was filed a *pro se* notice of appeal by someone on behalf of Mr. Valdez. I say that simply because the envelope reflects that it was mailed from Trenton, New Jersey.

1 THE COURT: I observed that.

2 MR. PARKER: Mr. Valdez was not -- was not located at Fort
3 Dix, New Jersey on the 12th, which is the purported date of an
4 electronic signature, not even his handwritten signature.

5 As had been noted in open court and has been noted more
6 fulsomely before Judge Duffey in a sealed session, Mr. Valdez has
7 cooperated with the government and the government, in fact, filed a 5K
8 motion for downward departure which is sealed, but I believe we have
9 provided a copy of that document to the Court. There's a potential
10 additional cooperation -- not necessarily an absolute reality but
11 potential that might warrant, at a subsequent date, a Rule 35
12 reduction of sentence. All of that having been said, this *pro se*
13 document -- alleged *pro se* document was filed. Subsequent to the
14 filing of the document I personally visited with Mr. Valdez --

15 THE COURT: Was this motion for appointment of appellate
16 counsel with it?

17 MR. PARKER: It was.

18 THE COURT: Okay.

19 MR. PARKER: They were both filed together.

20 THE COURT: Okay.

21 MR. PARKER: Subsequent to the filing of those documents I
22 personally visited with Mr. Valdez out at USP Atlanta. He authorized
23 me to represent to the government that he wished to not go forward
24 with an appeal, he wished to continue to cooperate, and I so informed
25 Ms. Hathaway and other members of the US Attorney's Office and so

1 that -- of course, because in the allegations of the motion for
2 appellate counsel are allegations that Mr. Maloy and I have been
3 ineffective in our assistance as his counsel and because of a prior
4 motion filed that was filed *pro se* by Mr. Valdez that was addressed by
5 Judge Duffey, I want to say in May, in which he alleged -- that was a
6 sealed document, I believe it's also been provided to the Court, and
7 it was addressed by Judge Duffey and as a result of that Mr. Valdez
8 withdrew that motion but he, in making that motion, alleged a desire
9 for new counsel. With the motion withdrawn, the matter was set for
10 sentencing and sentencing ensued on June the 11th. So that's the
11 background and those are my representations.

12 THE COURT: Did you discuss with him whether or not he
13 wanted to -- well, we don't need appointment of appellate counsel
14 anymore, apparently. Has he withdrawn the notice of appeal?

15 MR. PARKER: No, he hasn't. The Eleventh has pointedly
16 directed Mr. Maloy and myself to file a certificate of interested
17 parties, as well as the transcript request, and they said until we're
18 relieved of representation of Mr. Valdez we are going to be appellate
19 counsel. That was the words of the Clerk of the Court, that's not
20 reflected in an order, but I have a deep belief that that probably
21 would be, if necessary. And, quite frankly, that's just an impossible
22 task for us because, you know, we couldn't allege ourselves that we
23 were ineffective.

24 THE COURT: I know that but -- okay. Well, what I'm
25 asking: Did you discuss with him also, when you were discussing

1 whether or not he wanted to proceed on appeal, the origination of this
2 motion or if he wanted --

3 MR. PARKER: No, I did not inquire of that other than to
4 confirm he wasn't the one who put it -- or caused it to be placed in
5 the mail since he was here in this courthouse on June the 12th.

6 THE COURT: Okay.

7 MR. PARKER: At any rate, without transgressing into any
8 attorney/client, I did not care to go into that area.

9 THE COURT: Okay.

10 MR. PARKER: One other matter I'd like to represent to the
11 Court. I will say I've given my own views to him about the
12 incongruity of potential cooperation with the government
13 simultaneously with an appeal, but that was not based on any
14 communication from the government to me. Mr. Maloy has not seen
15 Mr. Valdez since sentencing so I'm the only counsel who has seen him.

16 THE COURT: Okay. Okay. Well, I think I would like to
17 speak to Mr. Valdez. Ms. Hathaway, I'll excuse you for a few minutes.

18 MS. HATHAWAY: Yes, ma'am.

19 (Pages 6 through 10 sealed)

20 * * * * *

1 THE COURT: Okay. Ms. Hathaway, in your absence Mr. Valdez
2 has advised the Court that he -- and, in fact, on the record -- has
3 directed Mr. Parker and Mr. Maloy to withdraw his notice of appeal.
4 He advises me that he wants to retain them as his attorney, that he
5 has no question at this point in time -- or concerns that they were
6 ineffective or haven't represented him. I explained to him that since
7 they're retained he can fire them whenever he would like and then the
8 question would become not for matters of appeal, if the notice is
9 withdrawn, but for any further cooperation matters or Rule 35 matters,
10 whether or not he would be appointed counsel to continue to represent
11 him in this court.

12 Did I summarize correctly, Mr. Valdez, our conversation?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Mr. Parker?

15 MR. PARKER: Yes, you did, Your Honor.

16 THE COURT: All right. Then I make a finding on the record
17 that based on speaking with Mr. Valdez, who I find understands what's
18 going on, declined an opportunity to speak with me without even
19 Mr. Parker present, says that he does not wish to pursue his appeal,
20 does not seek the appointment of counsel for any other purpose and
21 finds that his -- and believes that his representation to date has
22 been effective. All right. So I am going to deny as moot Number 307
23 which is the motion for appointment of appellate counsel.

24 Do you think I need to do anything else?

25 MR. PARKER: No, Your Honor. We will file during the day

1 the notice of withdrawal of the appeal.

2 THE COURT: Okay.

3 MR. PARKER: I assume that will trigger conduct by the
4 Eleventh Circuit.

5 THE COURT: Right.

6 And, Mr. Valdez, let me let you know that you can -- like I
7 said, if you want to terminate representation, do so, hire different
8 attorneys, if you can, or request appointment of counsel even without
9 the appeal pending for what's going on here, okay?

10 THE DEFENDANT: Yes, Your Honor.

11 MS. HATHAWAY: Your Honor, just for the record. There's a
12 companion case as well so when the Court enters its --

13 THE COURT: Yes.

14 MS. HATHAWAY: 16-CR-155.

15 THE COURT: Okay. So it's 09-CR-551 and 16-CR-155?

16 MS. HATHAWAY: That's right, Your Honor.

17 THE COURT: Okay. So they'll be in both cases. Okay. All
18 right. Then thank you.

19 MR. PARKER: Thank you, Your Honor.

20 [proceedings concluded]

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1
2 UNITED STATES DISTRICT COURT

3 NORTHERN DISTRICT OF GEORGIA

4 CERTIFICATE OF REPORTER

5
6 I do hereby certify that the foregoing pages are a true and
7 correct transcript of the proceedings taken down by me in the case
8 aforesaid.
9

10
11 This the 16th day of October, 2019.
12

13
14 /S/ Alicia B. Bagley
15 ALICIA B. BAGLEY, RMR, CRR
16 OFFICIAL COURT REPORTER
17 (706) 378-4017
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